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No. 401

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

CHEMICAL BANK NEW YORK TRUST COMPANY, Trustee, Mortgagee, *Petitioner,*

v.

Steamship WESTHAMPTON (Formerly Steamship MONTAUK POINT), Her Engines, Boilers, etc., *Respondent.*

BRIEF FOR THEODORE W. KHEEL AND RAYMOND J. SCULLY, TRUSTEES IN REORGANIZATION PROCEEDINGS FOR SEATRADE CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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September 28, 1966

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Questions Presented

The question on this petition is whether there are any "special and important reasons" within the meaning of Rule 19 of this Court for reviewing the decision of the Court of Appeals as to any of the following issues:

1. Whether the Court of Appeals correctly held that the Shipping Act, 1916, as in effect when this litigation started, voiding any "transfer" to an alien of an "interest" in a vessel of United States registry, effected without

prior approval of the Maritime Administration, applied to a mortgage of such a vessel to a United States citizen as trustee for bondholders, where the sole bond was issued to an alien.

2. If so, whether the amendment of the Act in 1965 providing a procedure for validating such mortgages was constitutional insofar as the procedure was inapplicable to mortgages involved in pending litigation.

3. Whether, regardless of the constitutionality of the amendment, the Court of Appeals—in considering a petition for rehearing that was filed before the introduction of the amendatory legislation and was still pending at the time of its enactment—should have reversed the original decision in order to give effect to any Congressional policy implicit in the amendment or in order to avoid injustice.

Statutes Involved

The texts of the relevant statutes are set out in Appendix A to the petition. The following provisions are particularly pertinent to disposition of the petition.

Section 37 of the Shipping Act, 1916 (46 U. S. C. § 835), as in effect when this litigation began, made it unlawful in time of war or national emergency "without first obtaining the approval of the Secretary of Commerce":

> "(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer . . ., to any person not a citizen of the United States . . . any vessel documented under the laws of the United States, or any interest therein . . ." Pet. App. 5a, 6a.[1]

[1] References to "Pet." are to the petition for *certiorari*, and references to "Pet. App." are to the appendices thereto.

The same section further provided that

> "Any such sale, mortgage, lease, charter, delivery, transfer . . . [without the requisite prior approval] shall be void . . ." Pet. App. 7a.

The above quoted section was amended by Public Law 346 of the 89th Congress which added new provisions dealing specifically with the issuance, transfer or assignment of bonds and other evidences of indebtedness secured by ship mortgages and required that the mortgage trustee be a United States citizen approved by the Secretary of Commerce. Section 4 provides that bonds issued to, or transferred or assigned to, aliens prior to or within a year after the effective date of the amendment are valid if the United States trustee is approved by the Secretary of Commerce within such year, but adds that

> "Nothing in this section shall be construed to alter retroactively any rights which were the subject matter of litigation pending on the date of enactment of this Act." Pet. App. 12a.

In addition to the statutes referred to in the petition, disposition of the petition involves the application of paragraph 1 of Rule 19 of this Court, which provides in relevant part that

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor."

Statement of the Case

The *S. S. Westhampton*, a vessel documented under the laws of the United States, was mortgaged to petitioner

Chemical Bank New York Trust Company as trustee, mortgagee, to secure a bond issue of which the sole bond was issued to an alien. (Pet. App. 40a-42a) The mortgage was not approved by the Maritime Administration (the delegate of the Secretary of Commerce for approval of transfers to aliens under the Shipping Act, 1916), no such approval having been sought. (Pet. App. 42a) Following foreclosure of the mortgage in the District Court, respondents Theodore W. Kheel and Raymond J. Scully (the "Trustees"), as trustees in bankruptcy reorganization proceedings for the vessel's owner, Seatrade Corporation, now pending in the District Court for the Southern District of New York, opposed payment of the proceeds to petitioner on the ground that the mortgage was invalid because it was executed in violation of the Act as in effect before the 1965 amendment. The Trustees deemed it their duty to test the validity of the mortgage in order to protect the interests of unsecured creditors in the proceeds remaining after satisfaction of valid liens. The District Court held that the mortgage did not qualify as a preferred mortgage entitled to statutory priority over most maritime liens, but it did not reach the question of validity as a common law mortgage. The Court of Appeals held that the mortgage qualified as a preferred mortgage, if valid at all, but that it was invalid as a transfer of an interest in the vessel to an alien without prior approval by the Maritime Administration. (Pet. App. 27a-35a)

For purposes of this brief, the Trustees accept the further statement of the case in the petition, except insofar as it includes conclusions of law and subject to the corrections and amplifications indicated below.

Reasons for Denying the Writ

1. The decision of the Court of Appeals cannot set a precedent for other litigation except two related proceedings in foreign courts.

The only other litigation pending when the 1965 amendment became effective that can present the same issues involves mortgages on sister ships of the *Westhampton*, for which petitioner is likewise trustee, mortgagee, and which were foreclosed in the courts of Bombay and Port Said. (Pet. 8) All other mortgages of United States vessels under indentures to secure bond issues to aliens, whether executed before or after the 1965 amendment of the Shipping Act, are saved by the amendment from invalidity under the statute as construed by the Court of Appeals. While the petition urges that the unique effect of the amended statute, as so construed, is a reason for granting the writ, it is on the contrary a reason for denying the writ under Rule 19 of this Court.

Rice v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70 (1955) involved a closely analogous situation. The petitioner sued a cemetery for damages for refusing on racial grounds to bury her husband. Certiorari was granted to review a decision of the Iowa Supreme Court affirming dismissal of the suit. After commencement of the litigation and before the decision of the state supreme court, a state law was passed which expressly outlawed such discrimination but provided "Nothing in this Act contained shall affect the rights of any parties to any pending litigation." 349 U. S. at 76. This Court affirmed by an evenly divided Court. On petition for rehearing, the writ was dismissed as improvidently granted on the ground that the Court's attention had not been focused on the fact that the legisla-

tion would prevent the question on the merits from arising in future litigation. 349 U. S. at 77.

Rice was a far stronger case than this one for adjudicating the merits, since it presented a constitutional issue of civil liberties that might well arise in other states which had not disposed of it by legislation, and since the Court had already granted the writ and heard oral argument. Nevertheless the Court decided that there were no "special and important reasons" within the meaning of the Court's Rule 19 for reviewing the case.

2. No substantial constitutional question is presented by the exclusion of mortgages involved in pending litigation from the statutory provision for retroactive validation of mortgages securing bond issues to aliens.

Unlike the situation in *Rice*, where the petitioner's suit was grounded in the first instance on the denial of constitutional rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, this case presents merely a question of statutory interpretation: whether the mortgage was a "transfer" of an "interest" in the vessel within the meaning of the statute.

Petitioner contends that the amendment was unconstitutional in confining its retroactive effect to mortgages not yet involved in litigation. Assuming the soundness of the petitioner's proposition that statutes applying to past transactions are to be applied to those involved in pending litigation (Pet. 12), this is merely a rule of construction and is inapplicable where the legislature has left no question open for construction. Petitioner cites no case, and we know of none, holding that a statute applying to past transactions is unconstitutional insofar as it does not apply to pending litigation. On the contrary, this Court has held a statute

unconstitutional insofar as it did apply to pending litigation. In *Ettor* v. *City of Tacoma*, 228 U. S. 148 (1913), it unanimously struck down, as applied to a pending suit, a statute that eliminated a previous statutory right for consequential damages resulting from the grading of a city street.

If the present proceeding had progressed to final judgment before enactment of the amendment, the interests of the general creditors, as represented by the Trustees, in the proceeds of the foreclosure sale remaining after satisfaction of valid liens could certainly not have been taken away from them by the amendment without violation of the Due Process Clause of the First Amendment. *Cf. Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555 (1935). There is a serious question whether the amendment would have been constitutional if it had applied to pending litigation. *Ettor* v. *City of Tacoma, supra.* To make it inapplicable as against persons who had gone to the trouble and expense of litigating to protect their existing interests in property invalidly mortgaged, was clearly within the bounds of legislative discretion and consistent with normal legislative practice. As stated by Senator Bartlett in the final debate on the amendment,

> "Congress and State legislatures again and again each session pass legislation with special provisions included, generally referred to as saving clauses, which exclude from the effect of any legislative act rights pending in litigation." 111 Cong. Rec. 27,027 (daily ed. Oct. 21, 1965).

3. The constitutional question raised in the petition was not presented to or considered by the Court of Appeals.

Even assuming that the constitutional question presented by the petition is substantial, the Court should not review it at this stage of the proceedings in view of peti-

tioner's failure to raise it before the Court of Appeals and that Court's failure to consider it.

In the absence of special reasons, this Court does not normally consider on certiorari questions not decided by the Court of Appeals, especially if they involve constitutional issues and the petitioner has had ample opportunity to raise them below. *Abel* v. *United States*, 362 U. S. 217, rehearing denied 362 U. S. 984 (1960). In the present case the petitioner submitted to the Court of Appeals a supplemental memorandum as to the bearing of the 1965 amendment on the petition for rehearing (III R. 357), but this did not mention a constitutional question, nor did the Court's order denying a rehearing. (Pet. App. 36a)

4. The amendment of the statute affords no other reason for reviewing the decision of the Court of Appeals.

Gondeck v. *Pan American World Airways, Inc.*, 382 U. S. 25 (1965), where the Court did grant certiorari to resolve an issue that was already settled for all future litigation, differed materially from the present case. No statutory amendment was involved. After denial of certiorari to review a decision of the Court of Appeals denying recovery for accidental death, a decision of this Court in another case established that the relevant statute had been erroneously construed. In the "interests of justice" (382 U. S. at 27) this Court granted certiorari and rehearing and reversed the decision of the Court of Appeals.

Here, there has been no determination—judicial or legislative—that the original interpretation was wrong. In amending the statute, Congress deliberately provided that the amendment should not apply to pending litigation. The legislative history shows clearly that Congress wished to avoid even influencing the outcome of such litigation. Mr.

Garmatz, speaking for the House conferees in the debate on final passage, declared:

> "The conference substitute would exclude from validation under section 4 of the act any bond, note, or other evidence of indebtedness involved in pending litigation, in the event the courts finally determine that such bond, note, or other evidence of indebtedness is invalid under laws existing prior to the passage of this act. Thus it will be clear that the Congress is not interested in substituting its judgment for that of the courts in the matters now pending in litigation." 111 Cong. Rec. 26,832 (daily ed. Oct. 21, 1965).

Congressman Mailliard likewise observed:

> ". . . I hope any court that reads the proceedings on this bill will understand perfectly clearly that it is the intent of the Congress to leave litigants in precisely the same position they were in before the passage of this bill." *Ibid.*

Senator Bartlett, submitting the conference report to the Senate, stated:

> ". . . Therefore, any ship mortgage bonds pending in litigation on the effective date of the act that otherwise would be affected by the legislation will remain unaffected and the litigation affecting such bonds will be continued as if no legislation had been passed." *Id.* at 27,026.

The passage quoted on page 7 of the petition in support of the statement that the 1965 amendment "repudiated the basis" of the Court of Appeals' decision appears in the report of the House Committee on the bill as passed by the House. If enacted, this version of the bill would have repudiated the basis of the decision, since it omitted from Section 4 the clause relating to pending litigation.

5. There are no other considerations of justice that warrant the granting of the writ.

The ground for the Court of Appeals decision was not "merely .... suggested on the eve of oral argument" as stated on page 7 of the petition. It was clearly indicated on pages 9-12 and 17-19 of the Trustees' brief, which was filed three weeks before oral argument. If, as stated in the petition (p. 7), the ground "had not been fully briefed or argued", this was because petitioner's reply brief brushed it aside, merely contending that it would lead to dire consequences including forfeiture of the vessel's proceeds and would be inconsistent with the Trustees' plan of reorganization—without discussing the problem of statutory interpretation or the relevant legislative history—and because petitioner chose to ignore the issue on oral argument. (The relevant portions of the two briefs are set forth in the Appendix to this brief at pages A-1–A-8.)

If, as urged in the petition, "the decision of the court below affects the substantial federal interest in the maintenance of just and sensible business relations with friendly nations" (Pet. 17), this is a concern of the Executive Branch of the Government which is charged with the conduct of foreign relations. See *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398 (1964). But since the Executive Branch neither filed a brief with the Court of Appeals nor appeared before the House or Senate committee to protect any such federal interest, this Court has no reason to assume that such an interest is adversely affected. It has no duty to grant review for the benefit of bondholders merely because they are aliens.

This brief will not burden the Court with a discussion of the arguments in the petition as to the merits of the

decision below. For the reasons set forth in the opinion and in the briefs of the other respondents, the decision was clearly correct, but even assuming it to be wrong, there are no "special and important reasons" why this Court should review it.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 28, 1966

APPENDIX

Extracts from Brief for Theodore W. Kheel and Raymond J. Scully, Trustees in Reorganization Proceedings for Seatrade Corporation, before the Court of Appeals for the Fourth Circuit:

[9]

ARGUMENT

I

The mortgage was executed in violation of Sections 808 and 835 of the Shipping Act.

The District Court stated the issue as "whether the . . . mortgage . . . meets *all* the tests of a 'preferred mortgage' set out in the Ship Mortgage Act, . . . particularly the requirements of § 922(a)(5) that the mortgagee be a citizen of the United States." (App. 3; emphasis added.) The first test specified in Section 922(a) for determining whether a mortgage is entitled to preferred status is that it be a "valid mortgage". It is therefore necessary to consider whether the mortgage complied with other applicable statutory requirements, particularly those of Sections 808 and 835 of the Shipping Act, which makes it unlawful "to sell, mortgage . . . or in any manner transfer" a United States vessel "or any interest therein . . . to any person not a citizen of the United States" without the approval of the Maritime Administration.

Since the Maritime Administration's approval of the transaction was not obtained, the question is whether there was a mortgage or a transfer of any interest in the vessel "to" the foreign lender within the meaning of the statute.

A. The statutory definition of "mortgagee", relied upon by appellant, is not applicable to the Shipping Act.

The definition of "mortgagee" in Section 911(5) is by its terms applicable only to "this chapter", which comprises the Ship Mortgage Act but not the Shipping Act.

The Merchant Marine Act, 1920, which included the Ship Mortgage Act and its definition of "mortgagee" in Section 911(5), also amended portions of the Shipping Act.[5] If the Congress had intended the definition of "mortgagee" to apply to the prohibition against mortgages to aliens contained in the Shipping Act, it would have been a simple matter to achieve this result by modifying the words "When used in this chapter—" and by including in the definition the expression "mortgage . . . to any person" used in Sections 808 and 835 as well as the word "mortgagee" used in Section 922(a)(5).

The action of the Congress in confining to the Ship Mortgage Act the definition of "mortgagee" as meaning the trustee, in the case of a trust deed and bond issue, is readily understandable in the light of the different purposes of the two Acts.

The Shipping Act was not concerned with the private financing of ship construction or purchases but with the broad objective, as stated in its preamble, of "encouraging, developing, and creating . . . a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries. . . ." 39 Stat. 728. The necessary construction of new vessels was to be effected by the Government acting

[5] Sections 804 and 805 regarding the United States Shipping Board. 41 Stat. 989 (1920).

through the Shipping Board. With this objective in mind, it was important that United States vessels should not pass into foreign hands. In the original Act, mortgages to aliens were not specifically proscribed, but in 1918 the Congress found it necessary to include mortgages in the prohibition of Section 835, 40 Stat. 901. The reason was cogently stated by the Chairman of the House Committee on Merchant Marine and Fisheries:

> "Not only sales and charters to foreigners, but mortgages to foreigners, without the consent of the Shipping Board, are made unlawful. This is because a mortgage has proved to be a common device by which foreign capital has sought to obtain control of American vessels." 56 Cong. Rec. 8026.

In enacting the Ship Mortgage Act in 1920 the Congress was primarily concerned with encouraging the private financing of the construction of additional American vessels. Under the law then existing, a ship mortgage was only a common-law mortgage and did not have the status of a maritime lien in admiralty proceedings. *Bogart* v. *The Steamboat John Jay*, 17 How. 399 (1854); see *Detroit Trust Co.* v. *The Barlum*, 293 U. S. 21, 32 (1934). To induce banks and other lenders to finance ship construction, it was deemed necessary not only to make clear that a mortgage was a maritime lien but to give it priority over certain other liens—the "preferred status" referred to in Section 922(a). See statement of Congressman Greene quoted in appellant's brief, note 9.

The different purposes of the two Acts are also reflected in the different types of prohibitions against mortgages to foreigners that were imposed. The earlier prohibition

was not absolute: the mortgage to an alien was unlawful only if permission of the United States Government was not obtained. If the Government should deem it consistent with the national interest that a vessel of the United States should be mortgaged under a trust indenture for a single alien bondholder, it could grant the necessary approval. It could even grant such approval if the mortgage were given directly to the foreign lender without the intervention of any trustee. Since the executive branch was given wide discretion in this respect, the Congress apparently saw no need to impose a restrictive definition of "mortgagee". When it came to providing a preferred status for ship mortgages, however, the Congress determined that the exclusion of foreign mortgagees should be absolute. The executive branch was given no discretion to make exceptions. Consequently it was necessary to avoid a rigid requirement that would discourage financing by bond issues in view of the difficulties of checking up on the distribution of bonds. Thus the restrictive definition served a useful purpose in the Ship Mortgage Act that was irrelevant to the purposes of the Shipping Act.

* * * * *

[17]

C. Even if the transaction did not involve an unauthorized "mortgage" to an alien, it involved an unauthorized "transfer" of an "interest" in the vessel in violation of the Shipping Act.

Sections 808 and 835 require Maritime Administration approval not only of a mortgage or other transfer of a vessel to an alien but also of any "transfer" of "any interest" in the vessel. Assuming, which the Trustees do not concede, that no mortgage to the foreign lender was

involved in this case, it is difficult to see how, in view of the broad terms of the indenture, discussed above, the lender avoided acquiring an interest in the vessel.

D. The requirements of the Shipping Act that any mortgage to an alien be approved by the Government was not modified by the Ship Mortgage Act.

As pointed out above (p. 10), the Act of Congress which enacted the Ship Mortgage Act included amendments of the Shipping Act. There is, therefore, no occasion for considering any implied repeal of the requirements of Sections 808 and 835. The earlier legislation established a basic requirement for all mortgages to aliens: Government approval. The later legislation gave special preferred status to mortgages that met additional standards: even if the Government should approve a mortgage to an alien, the mortgage could not have this status unless the alien's interest was confined to that of a bondholder in the case of "a trust deed and a bond issue thereunder" as provided in Section 911(5).

E. The administrative rulings of the Maritime Administration are not controlling.

Appellant has included in the Appendix to its brief a number of rulings of the Maritime Administration which indicate that the Administration did not regard the issuance of a bond to a foreign lender under a trust indenture as requiring its approval under Sections 808 and 835 of the Shipping Act (App. 150-73). It is submitted that, for the reasons indicated above, these rulings were incorrect. Obviously they cannot be controlling if inconsistent with the statute. However, even if it be assumed that they were consistent with the statute, it cannot be assumed that the

Administration would have given a similar ruling in this case in view of the degree of control which the bondholder could exercise over the vesel under the terms of the indenture, discussed above, and the circumstances under which it was executed with the intent of avoiding the statute.

Each of these rulings was carefully confined to the situation described in substantially the following terms:

> "... the alien bondholder does not acquire any interest or control over the mortgage or the vessel and does not acquire any rights or interests other than those of a bondholder as set forth in the Trust Deed or Indenture under which the bonds are issued, these rights or interests being limited to the collection of the money paid for the bonds, plus interest." App. 151, 163, 166.

or:

> "... the Trust Indenture expressly provides that no holder of any note shall have any claim to the property or any part thereof except for his pro rata share of the proceeds of any disposal of the property or part thereof." App. 157, 159, 161.

Rulings by the Bureau of Customs likewise cannot be assumed to be applicable to the circumstances of this case. Moreover, as pointed out in the District Court's opinion, most of them simply gave effect to the rulings of the Maritime Administration (App. 23).

To require approval of every mortgage where the original lender is an alien would impose no serious administrative burden. Any cases that the Administration may consider unobjectionable may be given virtually automatic approval. When the Congress has given the executive branch of the Government full discretion to grant approvals of otherwise forbidden mortgages to an alien, the judicial

branch should not read exceptions into the statutory prohibition.

Extract from Reply Brief for Chemical Bank New York Trust Company, Trustee, Mortgagee, before the Court of Appeals for the Fourth Circuit:

[17]

APPELLEES' POSITION WOULD IN EFFECT ELIMINATE SECTION 911(5) FROM THE STATUTE AND WOULD REQUIRE FORFEITURE OF THE VESSEL.

The Bankruptcy Trustees have gone so far as to indicate that a mortgage to a trustee for alien bondholders would be invalid under Section 808 or 835 even though the mortgage were otherwise valid under the Ship Mortgage Act as a result of application of Section 911(5). They argue that the definition of "mortgagee" under Section 911(5) is inapplicable under Sections 808 and 835 (Tr. Br. 10). Therefore, they argue, even if Section 911 (5) were applicable to the instant situation, the mortgage is still invalid. That result would require that mortgages which, to Chemical's knowledge, are generally conceded to be valid under the Ship Mortgage Act, be held invalid and violative of Section 808 or 835. Thus, a mortgage to an indenture trustee for one or more institutional bondholders, such as pension trusts, retirement funds and insurance companies which do not meet the technical citizenship requirements of Section 802 would be invalid because violative of Sections 808 and 835. Indeed, if the Bankruptcy Trustees' argument is correct, if there is a "public" offering of bonds and some of the bondholders—even though holding a small percentage—are not U. S. citizens, Section 911(5) would have to be disregarded. The mortgage would be invalid

under Sections 808 and 835, and the vessel would be subject to forfeiture.

Both Objectors and the Bankruptcy Trustees maintain that Section 922(a)(5) has been violated. The latter are frank in recognizing that, if Section 922(a)(5) has not been complied with, Section 835 has been violated. Under Section 835, a violation could lead to forfeiture of the vessel. If the vessel is forfeited neither Objectors nor the Bankruptcy Trustees would benefit. The entire vessel—in this case the proceeds from the sale of the vessel—would be forfeited to the United States. Appellees cannot have their cake and eat it too.[8] They have benefited from the increased value of the Westhampton resulting from its conversion to a bulk carrier. They now seek to obtain a windfall—but in their avarice they have gone too far because if they are correct they are entitled to nothing.

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[8] The position of the Bankruptcy Trustees is inconsistent with the Plan of Reorganization submitted on July 8, 1964 (after the decision below), to the creditors in the New York bankruptcy proceeding. *In the Matters of Seatrade Corp. et al.*, No. 63 B 216, S. D. N. Y. Order entered July 8, 1964. Under that Plan two preferred mortgages under the Ship Mortgage Act were to be granted to a trust indenture trustee to secure Series A and Series B bonds to be issued under the trust indenture. The Series A bonds were to be purchased by a single alien bank and the Series B bonds were, in effect, to be purchased by another alien bank. We say "in effect" because a New York bank was to take the Series B bonds only upon receipt of a guarantee from the second alien bank pursuant to which, if a default occurred, the bonds were to be transferred to that bank. The plan was approved by the New York District Court (*ibid.*), but failed because the U. S. Department of Justice, a substantial creditor of the bankrupts, refused to assent to the plan. *In the Matters of Seatrade Corp. et al., supra*, Hearing of September 25, 1964.

Contrary to Objectors' statement on page 9 of their brief, the Government has a financial stake in the outcome of the instant case, because, as a creditor of Seatrade and its affiliates, it is interested both in the proceeds of the sale of the Westhampton and in the preferred status of mortgages on two other vessels involved in the *Seatrade* proceedings.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT FERTEX STEAMSHIP CORPORATION, CALTEX (OVERSEAS) LTD., TEXACO INC. AND TRUSTEES OF SEAFARERS VACATION PLAN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 401

CHEMICAL BANK NEW YORK TRUST COMPANY, TRUSTEE, MORTGAGEE, *Libelant-Petitioner*,

v.

STEAMSHIP WESTHAMPTON (FORMERLY STEAMSHIP MONTAUK POINT), HER ENGINES, BOILERS, ETC., *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS FERTEX STEAMSHIP CORPORATION, CALTEX (OVERSEAS) LTD., TEXACO INC. AND TRUSTEES OF SEAFARERS VACATION PLAN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

Should the Supreme Court grant certiorari when the decision of the Court below is not in conflict with that of any other Circuit, presents no issue of public importance, is significant to the litigants only, and was correctly decided on the merits?

STATEMENT OF THE CASE

The sole reason that Hamburgishe Landesbank Girozentrale (Landesbank) requested Petitioner to act as Trustee